

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JIA SHENG,

Plaintiff,

v.

M&T BANK CORPORATION, and
MANUFACTURERS & TRADERS TRUST
COMPANY d/b/a M&T BANK,

Defendants.

No. 12 Civ. 01103 (HBS)

PLAINTIFF'S PROPOSED SUPPLEMENTAL INSTRUCTION NO. 1

- **Failure to Engage in “Interactive Process” Under the ADA, New York State Human Rights Law and FEHA**

The ADA, the New York State Human Rights Law, and FEHA each require an employer to engage in an “interactive process” with an employee who requests a reasonable accommodation for her pregnancy and/or pregnancy-related disability.

As part of this interactive process, the employer must work with their employee to identify the precise limitations resulting from the pregnancy and/or pregnancy-related disability and potential reasonable accommodations that could overcome those limitations so that the employee can continue to work.

- *Jackan v. New York State Dep't of Labor*, 205 F.3d 562, 566 (2d Cir. 2000) (“The ADA envisions an “interactive process” by which employers and employees work together to assess whether an employee's disability can be reasonably accommodated.”)
- 29 CFR § 1630.2(o)(3) (the interactive process “should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations”)

- *Scotch v. Art Inst. of California-Orange Cnty., Inc.*, 173 Cal. App. 4th 986, 1013, 93 Cal. Rptr. 3d 338, 360 (2009) (“The ‘interactive process’ required by the FEHA is an informal process with the employee or the employee’s representative, to attempt to identify a reasonable accommodation that will enable the employee to perform the job effectively.”) (citing Cal. Gov’t Code section 12940(n))
- Cal. Gov’t Code § 12945(a)(3)(A) (it is an unlawful employment practice: “For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider.”)

Dated: New York, New York
November 4, 2014

Respectfully submitted,

THE OTTINGER FIRM, P.C.

By: _____


George D. Vallas

Robert W. Ottinger

401 Park Avenue South

New York, New York 10016

Tel: (212) 571-2000

Fax: (212) 571-0505

george@ottingerlaw.com

robert@ottingerlaw.com

Counsel for Plaintiff